Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

AMERICAN JEWISH CONGRESS,

Petitioner,

v.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Dated: August 30, 2005

QUESTIONS PRESENTED

1. Whether that portion of *School District of City of Grand Rapids v. Ball*, 473 U.S. 373 (1985) which precludes the government from subsidizing sectarian school teachers who indoctrinate elementary and secondary school students in religion remains valid law.

2. Whether a program under which the federal government chooses through discretionary grants to fund and sponsor religious groups that place federally subsidized religion teachers in sectarian elementary and secondary schools can properly be characterized as a program of "true private choice" under *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

3. Whether the established line of this Court's cases precluding the federal government from providing direct cash payments to religious groups without requiring any accounting or monitoring of the funds to ensure that they are used solely for secular purposes remains binding authority.

PARTIES TO THE PROCEEDING

The Petitioner is American Jewish Congress ("AJC"), a non-profit organization whose goals include protecting fundamental constitutional freedoms and American democratic institutions, particularly the civil and religious rights and liberties of all Americans and the separation of church and state. Respondents are the Corporation for National and Community Service ("Corporation") (the Defendant) and the University of Notre Dame ("Notre Dame") (the Defendant-Intervenor).

STATEMENT PURSUANT TO RULE 29.6

American Jewish Congress does not have a parent company. There are no publicly held companies that have a 10% or greater ownership interest in American Jewish Congress.

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Petitioner AJC respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the District of Columbia Circuit (Pet. App. A) reversing the District Court is reported at 399 F.3d 351. The District Court's opinion (Pet. App. B) granting summary judgment to AJC is reported at 323 F. Supp. 2d 44. The District Court's order dated August 5, 2004, enforcing the rulings set forth in that opinion, is not reported and is reproduced at Pet. App. C.

JURISDICTION

The Court of Appeals denied without opinion AJC's timely filed petition for rehearing *en banc* on June 1, 2005. (Pet. App. D) This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Establishment Clause of the First Amendment to the Constitution of the United States is at issue in this case. That Clause provides that "Congress shall make no law respecting an establishment of religion ...." U.S. Const. amend. I.

Although AJC's request for relief is premised solely on the government's violation of the Establishment Clause, statutory and regulatory authority relating to the program at issue in this case include 42 U.S.C. § 12634, 42 U.S.C. § 12635, 45 C.F.R. § 2520.30 (2001), and 45 C.F.R.

§ 2520.30 (2002). Those authorities are reproduced at Pet. App. E.

INTRODUCTION

This case involves three constitutional questions, each of extraordinary significance, arising from the Court of Appeals' failure to follow established authority limiting government funding and sponsorship of religion. In the challenged program, the federal government is funding and sponsoring AmeriCorps teachers who engage in religious indoctrination of elementary and secondary students in parochial schools. The federal government chooses religious groups, through a discretionary process, that recruit and train those teachers in how to inculcate religion in their sectarian school placements. The government provides direct cash funding to the religious groups to help them recruit and train the teachers. It then pays the religion teachers what is effectively a salary supplement – a practice that has been barred since this Court's decision in *Lemon v. Kurtzman*, 403 U.S. 602, 606, 608 (1971).

Usurping this Court's prerogative, the Court of Appeals declined to apply the well-established precedent prohibiting such government sponsorship of religious indoctrination. *See School Dist. of City of Grand Rapids v. Ball*, 473 U.S. 373, 397 (1985). Asserting that such precedent no longer has force, and relying instead on *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), the Court of Appeals reversed the District Court's judgment finding the federal government's practices unconstitutional. The Court of Appeals' decision to overstep the bounds of this Court's precedent has potentially broad-ranging implications concerning the administration of federal programs – and the broader relationship between church and state in our nation. Review by this Court is needed to reinforce the crucially important constitutional limits of government sponsorship

and funding of religious indoctrination in this program and in the future. Delineating those limits is especially important now, in light of the Administration's "Faith-Based and Community Initiative."[1]

STATEMENT OF THE CASE

I. The AmeriCorps Education Awards Program And Grant Process

The federally chartered Corporation administers the AmeriCorps Education Awards Program, a program among whose purposes is to support the placement of teachers in public and private schools that have reported teacher shortages. (Pet. App. 15a, JA0749, JA1191) Qualifying teachers in the program are entitled to receive a federal Education Award of $4,725, which can be used for student loan forgiveness or for other prescribed purposes. (Pet. App. 16a, JA1191) A prerequisite to eligibility for an Education Award is completion of a minimum of 1700 hours of service. The Corporation obligates AmeriCorps participants to document the time counted towards that minimum hours requirement on timesheets. (Pet. App. 28a, JA1224,

The Education Awards Program is largely administered through grantees chosen by and funded by the Corporation. (Pet. App. 16a, JA0037) In order to distribute limited Congressionally authorized funds among applicants, the Corporation reviews applications and chooses through a subjective process which groups to fund. (Pet. App. 16a-18a, JA1194) The selection criteria that the Corporation uses to make decisions regarding which groups to fund are, the District Court concluded, "highly discretionary." (Pet. App. 43a) These criteria include, for example, whether the

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[1] The White House's description of its Initiative can be accessed on the World Wide Web at http://www.whitehouse.gov/government/fbci/.